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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARIANO MEJIA, Plaintiff and Appellant, v. Z VALET, INC., Defendant and Respondent.	B196345 (Los Angeles County Super. Ct. No. BC284323)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Anderson & Associates, Michael D. Anderson, Stephen B. Maseda for Plaintiff and Appellant.

Schwartz. Wisot & Wilson, Bruce E. Schwartz, Robin B. Ratner for Defendant and Respondent.

Plaintiff Mariano Mejia sued defendant Z Valet, Inc., alleging unfair business practices (Bus. & Prof. Code, §17200 et seq.)[1] and related causes of action based on the failure to pay overtime and other benefits. Mejia lost his case because of an adverse discovery ruling. We find that after the trial court vacated all previously set dates and set a new trial date, Mejia's affirmative actions in conducting discovery after the initial discovery cutoff date had passed and his failure to object to further discovery resulted in his implied consent to extending the cutoff date for discovery. Thus, Mejia had no basis for refusing to reply to Z Valet's discovery requests. Accordingly, the trial court did not err in sanctioning Mejia by deeming him to have admitted Z Valet's requests for admissions, and in thereafter granting nonsuit and judgment against Mejia.

FACTUAL AND PROCEDURAL SUMMARY

The thrust of Mejia's original complaint, filed in October of 2002, was a representative action that sought as relief disgorgement of allegedly wrongful profits on behalf of the general public. During the course of litigation, Proposition 64 (Gen. Elec. (Nov. 2, 2004)) was enacted, which limited the standing to sue under California's statutory unfair competition and false advertising laws (§§ 17200 et seq., 17500 et seq.).

"After Proposition 64, only those private persons 'who [have] suffered injury in fact and [have] lost money or property' (§§ 17204, 17535), may sue to enforce the unfair competition and false advertising laws. Uninjured persons may not sue (§§ 17204, 17535), and private persons may no longer sue on behalf of the general public (Prop. 64, § 1, subd. (f)." (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 240.) Proposition 64 essentially eliminated representative actions and required individually named plaintiffs either to allege particularized injuries or to file a class action pursuant to Code of Civil Procedure section 382. A plaintiff with a case pending at the time

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[1] Unless otherwise indicated, all statutory references are to the Business and Professions Code.

Proposition 64 was enacted was permitted to amend the complaint to satisfy the new law as to standing. (*Branick*, at p. 239.)

The amended complaints.

In April of 2005, Mejia obtained writ relief from this Court, which permitted him to amend his complaint to attempt to allege a class action. In June of 2005, Mejia filed a third amended complaint and asserted class action allegations. Mejia also, for the first time, sought monetary compensation in the form of unpaid overtime wages for approximately 1,000 new plaintiffs based on his proposed class definition.

Z Valet demurred. It acknowledged that the causes of action were subject to analysis under the relation back doctrine. However, Z Valet asserted that the third amended complaint alleged claims on behalf of approximately 1,000 new plaintiffs that were barred by the applicable statute of limitations. In response, Mejia argued that the plaintiffs were current and former Z Valet employees whose claims related back to the original complaint because "the parties, facts and causes of action are identical." According to Mejia, the relation back doctrine allowed him to amend the pleadings so that they related back without incurring the bar of the statute of limitations as to all employee claims. In effect, Mejia asserted that the claims of all new plaintiffs related back four years (to 1988) and forward an additional three years.

The trial court granted Mejia leave to file a fourth amended complaint. His fourth amended complaint was substantially identical to his third amended complaint. Again, Z Valet demurred. The trial court ruled that the statute of limitations for unpaid wages and unfair business practices barred Mejia's attempt to add 1,000 new plaintiffs with claim periods covering seven years. It sustained the demurrer to the fourth amended complaint with leave to amend, if possible, to allege a class period for the unfair business cause of action starting no earlier than four years prior to the filing of the third amended complaint, and in a parallel fashion to amend the other causes of action.

Mejia then filed a fifth amended complaint. It was essentially identical to his fourth amended complaint. The fifth amended complaint, however, did add a new named plaintiff, Hugo Zavala, although Mejia had not sought leave to so amend. Z Valet

demurred again and objected, in pertinent part, to the newly named plaintiff and to the failure to apply the appropriate four-year statute of limitations to the section 17200 claim.

Once again, the trial court sustained Z Valet's demurrer. It ordered Mejia to redact the representative allegations and to proceed with a single plaintiff in the fifth amended complaint. When Mejia failed to do so, on May 10, 2006, the trial court redacted and amended the fifth amended complaint, effectively striking the nonconforming allegations by, for example, eliminating the newly added plaintiff and reducing the time span for the period of the class action.

Discovery issues.

Meanwhile, during the course of the amended complaints, on May 18, 2004, at the hearing on Z Valet's request to continue the trial date, Mejia advised the trial court that he needed additional time for discovery. On November 23, 2005, the trial court vacated all previously set dates and reset the trial date for December 4, 2006.[2]

Both parties continued to propound discovery between March 25, 2005, and October 2, 2006, without objection as to any discovery cutoff period. Both parties also agreed to waive the discovery cutoff dates for the deposition of expert witnesses; they agreed to a cutoff date of November 15, 2006, for discovery as to expert witnesses.

On October 3, 2006, approximately two months before the December 4, 2006, trial date and on the date of the discovery cutoff, Z Valet personally served a set of requests for admissions and form interrogatories to Mejia. This discovery required Mejia to admit each of the allegations concerning unpaid wages and benefits was untrue or to provide supporting evidence of his claims. Mejia had until November 2, 2006, to timely respond to this discovery request.

Mejia served responses to the request for admissions by providing boilerplate procedural objections; he did not respond to the form interrogatories. Mejia did not then

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[2] The trial court subsequently determined that this effectively created a cutoff date for nonexpert discovery of October 3, 2006.

assert that the request for admissions was untimely for any reason. Mejia's objections contained a proof of service indicating service by mail on November 1, 2006. However, the envelope that contained Mejia's objections was postmarked November 4, 2006, by the United States Postal Service.

Z Valet received Mejia's objections on November 6, 2006. Z Valet then served a meet and confer letter requesting answers to the discovery and advising Mejia that his responses were untimely and thus that his objections were waived

On November 9, 2006, Z Valet filed an ex parte application to deem the requests admitted and to compel responses to the form interrogatories. At a hearing on that date, Mejia's counsel admitted that the requests were personally served on October 3, 2006, giving rise to a November 2, 2006, response deadline. As counsel stated, "It is true that the requests were served by personal service on October 3, and I have counted . . . the days to make sure that I have 30 days to properly respond, according to the code, and that it was November 2, and I put it on my calendar as well . . . and we did send them on November 1."

However, the trial court apparently disbelieved Mejia's counsel, in light of the postmark on the envelope sent to Z Valet. Nonetheless, the trial court did not at that time deem the requests admitted, but rather gave Mejia an opportunity to provide answers without the assertion of any objections. The court also granted Z Valet's application to shorten notice, scheduled a hearing for November 20, 2006, and ordered Mejia to meet and confer in the interim.

On November 14, 2006, Mejia served a meet and confer letter, alleging that Z Valet's discovery was improper because the discovery cutoff date had long ago expired, and that the cutoff date had not been continued as a result of the new December 2006 trial date. Nonetheless, Mejia's counsel agreed in the letter to respond to discovery "in the spirit of cooperation." Yet, Mejia did not respond to the discovery requests, nor did he file an opposition to the motions to deem the discovery requests admitted.

At the November 20, 2006, hearing, the trial court again ordered Mejia to meet and confer, and then to advise the court when Mejia would respond to the discovery

requests. The trial court noted that despite Mejia's assertion that his objections were timely served, an examination of the declarations and exhibits provided by the parties revealed that the responses were not timely served.

When Mejia failed to reply to the discovery requests, the trial court granted Z Valet's motions to compel, and deemed the request for admissions to be admitted. The trial court noted that "even if there had been some confusion about a discovery cut off date, plaintiff has waived any objection. Plaintiff's counsel's November 14, 2006 letter also constitutes a waiver."

In light of the order deeming Mejia to have admitted the request for admissions, Z Valet moved for nonsuit. Mejia and Z Valet stipulated that the trial court could hear the motion for nonsuit before opening arguments at trial. On December 1, 2006, the trial court granted Z Valet's motion for nonsuit and judgment against Mejia.

Mejia appeals.

DISCUSSION

I. The trial court did not abuse its discretion in deeming Mejia to have admitted the unanswered requests for admission.

Mejia contends that the discovery request served on October 3, 2006, was untimely. He asserts it was untimely because it was served long after the March 25, 2005, cutoff date, and the postponement of the original April 25, 2005, trial date to December 4, 2006, did not vacate or reset the March 25, 2005, discovery cutoff date. However, we find that Mejia's conduct in several regards amounted to an implied consent to a postponement of the discovery cutoff, and that Z Valet's discovery requests were timely and required a response.

The Legislature has set forth the time frame for the completion of discovery in civil cases. Generally, a party is "entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action." (Code Civ. Proc., § 2024.020, subd. (a).) "Except as provided in Section 2024.50 [i.e., upon motion of any party], a continuance or postponement of the trial date does not operate to

reopen discovery proceedings." (Code Civ. Proc., § 2024.020, subd. (b).) Also, the parties may "enter into an agreement to extend the time for the completion of discovery proceedings," but the agreement "shall be confirmed in a writing that specifies the extended date." (Code Civ. Proc., § 2024.060.)

Here, however, we focus not on any specific agreement or on the mere continuance of the trial date, but rather on Mejia's conduct after the trial date was continued. We find that such conduct amounted to Mejia's implied consent to extending the time for completion of discovery. Although the trial court deemed the matter as a waiver by Mejia, we characterize the same conduct by Mejia under the largely similar rubric of an implied consent. It is well settled that a ruling by the trial court correct in law—here, that Z Valet's request for admissions was timely served—will not be disturbed on appeal regardless of what reason is given to support it. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.)

In various contexts courts have long recognized that the conduct of a party may result in an implied consent to a continuance, despite certain statutory time frames otherwise applicable. *Knoell v. City of Lompoc* (1987) 195 Cal.App.3d 378, is instructive. In that case, a statute required that a hearing be held within 30 days after a complaint is filed regarding a subdivision application matter. The appellate court found that apart from the fact that the hearing was timely held because it was commenced in time, though not completed until after the 30 day period because of a continuance, appellant impliedly consented to the continuance. "Appellant was present and made no objection either to a continuance or to the date selected for the continuation." (*Id.* at p. 382; see also *People v. Johnson* (1980) 26 Cal.3d 557, 567, fn. 7 [failure of defendant or counsel to timely object to a postponement of the criminal trial date constitutes implied consent to the postponement].)

The discovery issue here presents an even more compelling case for implied consent. Mejia not only failed to object to the discovery continuing well beyond the original cutoff date, but he actively participated in discovery after that initial date.

Both Mejia and Z Valet conducted discovery throughout the ensuing months after the time Mejia now claims discovery was cut off. For example, on May 3, 2005, Mejia advised the trial court that there would be hundreds of additional class members, and he needed time to amend the complaint to a class action. When Z Valet requested time to conduct class discovery and to depose potential class members, Mejia made no objection to continued discovery. In October of 2006, Mejia served two deposition notices and a request for production of documents. Moreover, Mejia and Z Valet stipulated to third party depositions and expert witness depositions during the month of November 2006, with no objections to the continued discovery by either side.

Such affirmative conduct by Mejia and the absence of any objections by Mejia are totally inconsistent with the notion that discovery had purportedly closed back on March 25, 2005. Nor does Mejia explain why, if discovery had closed, he responded to the discovery in November of 2006. Also, the boilerplate objections in Mejia's November 2006 discovery response did not raise the claim now made of discovery allegedly served after the cutoff date.

Mejia's meritless claim, that Z Valet's discovery was improper because it was purportedly filed long after the discovery cutoff date, was Mejia's only justification for the failure to reply to discovery requests. Hence, there was no lawful basis for Mejia's willful failure to reply, and the trial court acted well within its broad discretion in deeming the request for admissions to be admitted as a discovery sanction. (See *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Sauer v. Superior Court* (1987) 195 Cal.App.3d 213, 228.)

Because the trial court did not abuse its discretion in granting Z Valet's motion to compel and deeming the request for admissions to be admitted, Mejia has no basis for attacking the trial court's order granting a nonsuit.

II. The relation back issue.

Mejia also contends that the claims in his amended complaint related back to the initial filing date for the purposes of the statute of limitations, and that Proposition 64 should not be applied to deprive the affected parties of their claims. However, in view of

the fact that the trial court did not err in granting nonsuit based on the discovery issue discussed above, it is unnecessary to address the relation back issue.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.